

# Notice of Allowability

Application No.

09/005,479

Examiner

Patrice Winder

Applicant(s)

LEVERGOOD ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to after final amendment filed on May 1, 2007.
2. ☒ The allowed claim(s) is/are 3,5-26,31-43,49-63,67-78,96-98,100-106 and 108-113.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date See Continuation Sheet
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

  
**PATRICE WINDER**  
**PRIMARY EXAMINER**

Continuation of Attachment(s) 3. Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date: 8-26-1999; 10-16-2000; 11-2-2000; 5-17-2001; 6-12-2006; 7-24-2006; 8-17-2006.

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

#### **In the specification:**

Please replace first paragraph on page 1, lines 3-5 with:

- -This application is a Continuation of U.S. Serial No. 08/474,096, filed June 7, 1995, now US Patent No. 5,708,780 the entire teachings of which are incorporated herein by reference. - -

### ***Information Disclosure Statement***

2. According to the Patent Application Information Retrieval (PAIR) system, an information disclosure statement was filed May 30, 2001. However, this is an error, the application number associated with the IDS is co-pending application 09/580,916. It has been placed in the application file, but the information referred to therein has not been considered.

3. The Information Disclosure Statement filed on June 12, 2006 included citations which fail to comply with 37 CFR 1.97 (b)(5), i.e. the citations are undated. Those citations have been redacted from the IDS filed on June 6, 2006. Attached to the

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present office action is a copy of the PTO-1449 indicating that citations have been redacted.

4. The following Information Disclosure Statements filed on the associated dates included at least one citation that was missing a date: 8/26/1999; 10/16/2000; 11/2/2000; 5/17/2001; 6/12/2006; 7/24/2006 and 8/17/2006. Attached to the present office action is a copy of each PTO-1449 including citations with updated date information.

#### ***Reasons for Allowance***

5. The following is an examiner's statement of reasons for allowance: Claims 3,5-26, 31-43, 49-63, 67-78, 96-98, 100-106 and 108-113 are allowable over the prior art of record. The claims were rejected under the judicially created doctrine of obviousness-type double patenting with US Patent No. 5,708,780 and have been terminally disclaimed. The co-pending re-examination application 90/007,183 contains similar claims and on July 27, 2005 mailed a "Notice of Intent to Issue a Reexam Certificate".

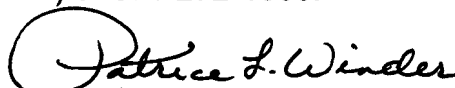
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrice Winder whose telephone number is 571-272-3935. The examiner can normally be reached on Monday-Friday, 10:30 am-7:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Patrice Winder  
Primary Examiner  
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June 4, 2007